

Message Text

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TAGS: EFIS EC
SUBJ: EMBARGO PROVISIONS OF FISHERY CONSERVATION AND MANAGEMENT ACT

REF: STATE 269399

1. EMB HAS READ WITH INTERST DEPARTMENT'S LEGAL OPINION ON THE CONTINGENCIES APPARENTLY RAISED BY EMBASSY BRASILIA IN LIGHT OF THE EMBARGO SANCTIONS OF THE FISHERY CONSERVATION AND MANAGEMENT ACT. THE ACT HAS RAISED SIMILAR QUESTIONS HERE, IN PRIVATE--AMONG FONOFF OFFICIALS AND OURSELVES--AND IN THE MEDIA AS A RESULT OF SOME DISTORTED WIRE SERVICE REPORTING FROM WASHINGTON. WE WOULD THEREFORE APPRECIATE A SIMILAR INTERPRETATION OF THWE PROVISIONS OF THE ACT AS THEY MIGHT APPLY TO ECUADOREAN FISHING POLICY, LEGISLATION AND ACTIONS. AS FOLLS:

2. ECUADOR CURRENTLY HOLDS THAT IT SHOULD BE SOLELY RESPONSIBLE FOR THE MANAGEMENT OF HIGHLY MIGRATORY SPECIES WITHIN ITS CLAIMED TERRITORIAL SEA OF 200 MILES. IT HAS ALSO; HOWEVER, INDICATED ITS INTERESTS FROM TIME TO TIME IN ADHERING TO A FUTURE INTERNATIONAL REGIONAL PACT ON HIGHLY MIGRATORY SPECIES. NEVERTHELESS, IN THE PRESENT ABSENCE OF SUCH A REGIONAL ARRANGEMENT, DOES SECTION 202 (E) (2) HAVE ANY RELEVANCE FOR ECUADOR? OR IS THERE SOME OTHER LITMUS TEST IMPLICIT IN THIS ARTICLE WHICH HAS

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ESCAPED US?

3. EMB ASSUMES THAT AS LONG AS ECUADOR MAINTAINS ITS PRESENT POLICY OF COLLECTING FEES FOR TUNA FISHING, BUT IMPOSING NO FURTHER RESTRICTIONS ON US FISHERS, SEC. 205(A) (1) IS NOT RELEVANT, EVEN IN THE EVENT THAT THERE MAY NOT HAVE BEEN NEGOTIATIONS WHEN THE LAW COMES INTO EFFECT. ARE WE CORRECT IN THIS ASSUMPTION? BY THE WAY, WHAT CONSTITUTES "NEGOTIATION" AND HOW IS IT DETERMINED WHETHER A NATION IS NEGOTIATING IN GOOD FAITH OR NOT?

4. EMB ALSO INTERPRETS SEC. 205 (A) (2), WITH REGARD TO PERMITTING US TO ENGAGE IN FISHING FOR HIGHLY MIGRATORY SPECIES IN ACCORDANCE WITH AN APPLICABLE FISHING AGREEMENT, TO LACK EFFECT UNTIL SUCH AN AGREEMENT IS ACTUALLY CONCLUDED. ARE WE CORRECT?

5. UNDER SEC. 205(4) (C), US NON-RECOGNITION OF ECUADOR'S CLAIM OF JURISDICTION IF IT SEIZES A US FISHING BOAT WHICH HAS NOT OBTAINED A LICENSE IS PRESUMABLY KEYED BACK TO SEC. 202 (E) (2). THEREFORE, CAN ANY SANCTION BE TRIGGERED THROUGH THIS PARAGRAPH IN THE ABSENCE OF A REGIONAL FISHING AGREEMENT? COULD ECUADOR THEN CONTINUE TO ENFORCE ITS FISHING LAWS WITHIN ITS CLAIMED JURISDICTION WITHOUT FEAR OF PROVOKING AN EMBARGO?
BLOOMFIELD

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